income as an analog for total income. The possessory interest tax on cable television franchise rights, therefore, is tied directly to the prices charged by the cable operator to its subscribers.

The net effect of the possessory interest tax is very much the same as that of a utility users tax. Both taxes are a direct function of the price charged by the cable operator to subscribers, and, in both cases, the tax rate and the obligation to collect and pay the tax are entirely beyond the control of the cable operator. Both increase the price charged to subscribers, yet the increased revenues from the higher prices flow entirely to the government imposing the tax, not to the cable operator.

The Contra Costa County Assessor, for example, has valued Bay Cablevision's possessory interests by imputing a rent equal to twenty-five percent (25%) of Bay Cablevision's gross income, then discounting the stream of estimated future income over a span of

The data from the FCC survey does not break out possessory interest taxes from the reports of prices charged by the surveyed cable television operators. Those prices include possessory interest taxes to the extent cable operators subject to the possessory interest tax were surveyed. However, because California County Assessors' super-aggressive approach to valuation of cable television possessory interests is unique and not uniform even across California Counties, the existence of the possessory interest taxes has little impact on the benchmark rates. Thus, cable television operators not subject to possessory interest taxes benefit minimally from the inclusion of possessory interest taxes in the price statistics to the extent the benchmarks are marginally higher, but that increase is clearly insufficient to account for the higher transaction costs of the cable television operators subject to the possessory interest taxes on their franchise rights. Permitting cable television operators to pass-through the possessory interest tax, then, would only level the playing field between operators subject to possessory interest taxes and those which are not.

The methodology by which the FCC analyzed its data and developed national average prices from which it determined the benchmark formulae is systematically biased against California cable television operators. For cable television systems with the characteristics which result in a national average price per channel of 88 cents using the FCC methodology, in California, the same methodology would result in an average price of 94 cents per

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channel. The penetration of cable television systems in California is systematically lower than penetration nationwide, so the difference in the average price per channel is not a function of demand; it must be a function of costs. There is insufficient data to determine how much of the cost differential is specifically a result of California's possessory interest taxes, but the existence of those taxes certainly contributes to that bias.

The net result of the bias is that California cable television operators will suffer larger price reductions from the application of the benchmarks, which are based on national averages, than will operators in the rest of the country. A larger proportion of cable television operators from California than from the rest of the country might, therefore, be expected to file cost-of-service showings. Permitting cable operators to pass-through possessory interest taxes will reduce the bias and decrease the pressure on California cable television operators to seek relief from the benchmarks.

CCTA is also requesting that the FCC permit cable television operators to show the possessory interest tax as a separate line item on subscriber invoices. Such itemization has no impact on consumer buying behavior. The only relevant consideration, therefore, is the amount of information subscribers should have available with regard to the factors that go into the determination of the size of their bills.

The NCTA survey asked cable television operators whether they show the franchise fee as a separate line item on their invoices.

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Approximately 40% do. Regression analysis of the survey data demonstrates no relationship between whether the franchise fee is

In addition, he is currently working on issues related to the economics of defense acquisition. He is considering a whole range of issues, including the economics of cooperative contractor teaming for research and development and the incentive effects of DOD rules governing the allocation of indirect costs.

## PROFESSIONAL ACTIVITIES

July 1974-present -- Litigation Consultant (Including Newspaper and Cable Antitrust and Labor Law Issues)

November 1989-March 1991 -- Consultant to the National Cable Television Association (Regulatory Proceedings on Effective Competition)

June 1982 -- Testimony on Tax Laws and Mergers in the Newspaper Industry (House Ways and Means Subcommittee on Select Revenue Measures)

March 1980 -- Testimony on the Impact of Media Concentration (House Small Business General Oversight Subcommittee)

March 1979-August 1979 -- Consultant to National Association of Broadcasters (Study of the Recording Industry)

August 1978-December 1979 -- Consultant to Federal Trade Commission (Conference on Economics of Mass Communications Industries)

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